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OFFICE OF PETITIONS

In re Application of :
Brian D. Butler et al :
Application No. 09/853,856 : DECISION GRANTING PETITION
Filed: May 10, 2001 : UNDER 37 CFR 1.137(f)
Attorney Docket No. 30913-1001 :

This is a decision on the petition, filed January 22, 2003, to revive the instant nonprovisional application under the unintentional provisions of 37 CFR 1.137(f).

The petition is GRANTED.

Although not stated by petitioner, it appears from Office computer database records that a PCT application based on the instant application was filed on May 11, 2001, which date is one day subsequent to the filing of the instant application. If this statement is incorrect, petitioner must immediately notify the Office. Petitioner is advised that any petition to revive under 37 CFR 1.137(f) should include the application number of the foreign filing and the filing date.

The petition further indicates that "Applicant unintentionally and without deceptive intent failed to notify the Patent Office of a foreign filing and to file a Request to Rescind Previous Nonpublication Request," within 45 days subsequent to the filing of the subject application in a foreign country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country, or under a multilateral international agreement, that requires publication of applications 18 months after filing.

A petition under 37 CFR 1.137(f) must be accompanied by:

- (1) the reply which is met by the notification of

such filing in a foreign country or under a multinational treaty;

(2) the petition fee as set forth in 37 CFR 1.17(m); and

(3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The instant petition has been found in compliance with 37 CFR 1.137(f). However, while the statement of unintentional delay does not comply with the rule, the statement presented will be construed as meaning that "the entire delay in filing the required reply [Notice to Rescind Previous Nonpublication Request Under 35 U.S.C. § 122(b)(2)(B)(ii)] until the filing of a grantable petition was unintentional." Accordingly, the failure to timely notify the Office of a foreign or international filing within 45 days as provided by 35 U.S.C. § 122(b)(2)(B)(iii) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Corrected Filing Receipt which sets forth the projected publication date of June 6, 2003 accompanies this decision on petition.

Any inquiries concerning this decision may be directed to the undersigned at (703) 305-8680.

This application is being forwarded to Technology Center Art Unit 2829 for appropriate action on the reply received November 18, 2002.



Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ATTACHMENT: Corrected Filing Receipt